

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 979**

Introduced by General Affairs Committee: Janssen, 15, Chairperson;  
Connealy, 16; Hartnett, 45; Quandahl, 31;  
Schrock, 38;

Read first time January 5, 2000

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend  
2 sections 53-101, 53-117.02, 53-117.07, and 53-117.08,  
3 Reissue Revised Statutes of Nebraska, and sections  
4 53-117, 53-133, and 53-1,115, Revised Statutes  
5 Supplement, 1999; to provide for hearing officers; to  
6 harmonize provisions; and to repeal the original  
7 sections.  
8 Be it enacted by the people of the State of Nebraska,

1           Section 1. The commission shall contract with a hearing  
2 officer to conduct hearings under the Nebraska Liquor Control Act.  
3 The contract shall provide for a hourly rate of compensation for  
4 the hearing officer and in addition for reimbursement for the  
5 expenses of the hearing officer in conducting the hearings. The  
6 hearing officer shall be an attorney licensed to practice law in  
7 the State of Nebraska and shall conduct such hearings pursuant to  
8 the requirements of the act.

9           Sec. 2. Section 53-101, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           53-101. Sections 53-101 to 53-1,121 and section 1 of  
12 this act shall be known and may be cited as the Nebraska Liquor  
13 Control Act.

14           Sec. 3. Section 53-117, Revised Statutes Supplement,  
15 1999, is amended to read:

16           53-117. The commission has the following powers,  
17 functions, and duties:

18           (1) To receive applications for and to issue licenses to  
19 and suspend, cancel, and revoke licenses of manufacturers,  
20 wholesalers, nonbeverage users, retailers, railroads including  
21 owners and lessees of sleeping, dining, and cafe cars, airlines,  
22 and boats in accordance with the Nebraska Liquor Control Act;

23           (2) To fix by rules and regulations the standards of  
24 manufacture of alcoholic liquor not inconsistent with federal laws  
25 in order to insure the use of proper ingredients and methods in the  
26 manufacture and distribution thereof and to adopt and promulgate  
27 rules and regulations not inconsistent with federal laws for the  
28 proper labeling of containers, barrels, casks, or other bulk

1 containers or of bottles of alcoholic liquor manufactured or sold  
2 in this state. The Legislature intends, by the grant of power to  
3 adopt and promulgate rules and regulations, that the commission  
4 have broad discretionary powers to govern the traffic in alcoholic  
5 liquor and to enforce strictly all provisions of the act in the  
6 interest of sanitation, purity of products, truthful  
7 representations, and honest dealings in a manner that generally  
8 will promote the public health and welfare. All such rules and  
9 regulations shall be absolutely binding upon all licensees and  
10 enforceable by the commission through the power of suspension or  
11 cancellation of licenses, except that all rules and regulations of  
12 the commission affecting a Class H license, a bottle club license,  
13 or a club possessing any form of retail license shall have equal  
14 application to all such licenses or shall be void;

15 (3) To call upon other administrative departments of the  
16 state, county and municipal governments, county sheriffs, city  
17 police departments, village marshals, peace officers, and  
18 prosecuting officers for such information and assistance as the  
19 commission deems necessary in the performance of its duties;

20 (4) To recommend to local governing bodies rules and  
21 regulations not inconsistent with law for the distribution and sale  
22 of alcoholic liquor throughout the state;

23 (5) To inspect or cause to be inspected any premises  
24 where alcoholic liquor is manufactured, distributed, or sold and,  
25 when sold on unlicensed premises or on any premises in violation of  
26 law, to bring an action to enjoin the use of the property for such  
27 purpose;

28 (6) To appoint a hearing officer to hear and determine

1 appeals from orders of a local governing body in accordance with  
2 the act;

3 (7) To conduct or cause to be conducted an audit to  
4 inspect any licensee's records and books;

5 (8) In the conduct of any hearing or audit authorized to  
6 be held by the commission (a) to ~~examine or~~ cause to be examined,  
7 under oath, any licensee and to ~~examine or~~ cause to be examined the  
8 books and records of such licensee, (b) to authorize the hearing  
9 officer to hear testimony and take proof material for ~~its~~ the  
10 commission's information in the discharge of its duties under the  
11 act, and (c) to ~~administer or~~ cause oaths to be administered;  
12 ~~oaths;~~

13 (9) To investigate the administration of laws in relation  
14 to alcoholic liquor in this and other states and to recommend to  
15 the Governor and through him or her to the Legislature amendments  
16 to the act; and

17 (10) To receive, account for, and remit to the State  
18 Treasurer state license fees and taxes provided for in the act.

19 Sec. 4. Section 53-117.02, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 53-117.02. In case of disobedience on the part of any  
22 person to any subpoena issued ~~by the commission~~ under the Nebraska  
23 Liquor Control Act or the refusal of any witness to testify on any  
24 matters regarding which he or she may be lawfully interrogated, it  
25 shall be the duty of the district court for the county in which  
26 such hearing was convened, on the application of a member of the  
27 commission, to compel obedience by proceedings for contempt as in  
28 the case of disobedience to the requirements of a subpoena issued

1 from such court or a refusal to testify therein.

2 Sec. 5. Section 53-117.07, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4 53-117.07. All proceedings for the suspension,  
5 cancellation, or revocation of licenses of manufacturers,  
6 wholesalers, nonbeverage users, craft breweries, railroads,  
7 airlines, shippers, and boats shall be before the commission, and  
8 the proceedings shall be in accordance with rules and regulations  
9 adopted and promulgated by it not inconsistent with law. No such  
10 license shall be so suspended, canceled, or revoked except after a  
11 hearing by the ~~commission~~ hearing officer appointed under section 1  
12 of this act with reasonable notice to the licensee and opportunity  
13 to appear and defend.

14 Sec. 6. Section 53-117.08, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 53-117.08. The license of any licensee who violates any  
17 of the provisions of the Nebraska Liquor Control Act shall be  
18 suspended, canceled, or revoked. If any licensee violates the  
19 regulations adopted and promulgated by the commission or any lawful  
20 ordinance of the local governing body, the commission may, after  
21 proper hearing by the hearing officer appointed under section 1 of  
22 this act and after review of the evidence adduced at the hearing  
23 and the hearing officer's findings and recommendations, suspend,  
24 cancel, or revoke the license. If any licensee is convicted of a  
25 violation of the terms of the act, the court shall immediately  
26 notify the local governing body and the commission.

27 Sec. 7. Section 53-133, Revised Statutes Supplement,  
28 1999, is amended to read:

1                   53-133.   (1) The commission shall set for hearing before  
2 ~~it~~ a hearing officer appointed under section 1 of this act any  
3 application for a retail license, bottle club license, or craft  
4 brewery license relative to which ~~it~~ the commission has received:

5                   (a) Within forty-five days after the date of receipt of  
6 such application by the city, village, or county clerk, a  
7 recommendation of denial from the city, village, or county;

8                   (b) Within ten days after the receipt of a recommendation  
9 from the city, village, or county, or, if no recommendation is  
10 received, within forty-five days after the date of receipt of such  
11 application by the city, village, or county clerk, objections in  
12 writing by not less than three persons residing within such city,  
13 village, or county, protesting the issuance of the license.  
14 Withdrawal of the protest does not prohibit the commission from  
15 ~~conducting~~ setting a hearing based upon the protest as originally  
16 filed and making an independent finding based upon review of the  
17 evidence adduced at the hearing and the hearing officer's findings  
18 and recommendations as to whether the license should or should not  
19 be issued; or

20                   (c) Within forty-five days after the date of receipt of  
21 such application by the city, village, or county clerk, objections  
22 by the commission or any duly appointed employee of the commission,  
23 protesting the issuance of the license.

24                   (2) Hearings upon such applications shall be in the  
25 following manner: Notice indicating the time and place of such  
26 hearing shall be mailed to the applicant, the local governing body,  
27 and each individual protesting a license pursuant to subdivision  
28 (1)(b) of this section, by certified mail, return receipt

1 requested, at least fifteen days prior to such hearing. The notice  
2 shall state that the ~~commission~~ hearing officer will receive  
3 evidence for the purpose of ~~determining~~ recommending whether ~~to the~~  
4 commission should approve or deny the application. Mailing to the  
5 attorney of record of a party shall be deemed to fulfill the  
6 purposes of this section. The ~~commission~~ hearing officer may  
7 receive evidence, including testimony and documentary evidence, and  
8 may hear and question witnesses concerning the application.

9           Sec. 8. Section 53-1,115, Revised Statutes Supplement,  
10 1999, is amended to read:

11           53-1,115. (1) A copy of the rule, regulation, order, or  
12 decision of the commission denying an application or suspending,  
13 canceling, or revoking a license or of any notice required by any  
14 proceeding before it, certified under the seal of the commission,  
15 shall be served upon each party of record to the proceeding before  
16 the hearing officer or commission. Service upon any attorney of  
17 record for any such party shall be deemed to be service upon such  
18 party. Each party appearing before the hearing officer or  
19 commission shall enter his or her appearance and indicate ~~to the~~  
20 ~~commission~~ his or her address for such service. The mailing of a  
21 copy of any rule, regulation, order, or decision of the commission  
22 or of any notice by the commission, in the proceeding, to such  
23 party at such address shall be deemed to be service upon such  
24 party.

25           (2) Within thirty days after the service of any rule,  
26 regulation, order, or decision of the commission suspending,  
27 canceling, or revoking any license upon any party to the  
28 proceeding, as provided for by subsection (1) of this section, such

1 party may apply for a rehearing with respect to any matters  
2 determined by the commission. The commission shall receive and  
3 consider such application for a rehearing within thirty days after  
4 its filing with the executive director of the commission. If such  
5 application for rehearing is granted, the commission shall proceed  
6 as promptly as possible to set a hearing before the hearing officer  
7 to consider the matters presented by such application. No appeal  
8 shall be allowed from any decision of the commission except as  
9 provided in section 53-1,116.

10 (3) Upon final disposition of any proceeding, costs shall  
11 be paid by the party or parties against whom a final decision is  
12 rendered. Costs may be taxed or retaxed to local governing bodies  
13 as well as individuals. Only one rehearing referred to in  
14 subsection (2) of this section shall be granted by the commission  
15 on application of any one party.

16 (4) For purposes of this section, party of record means:

17 (a) In the case of an administrative proceeding before  
18 the commission on the application for a retail, bottle club, or  
19 craft brewery license:

20 (i) The applicant;

21 (ii) Each individual protesting the issuance of such  
22 license pursuant to subdivision (1)(b) of section 53-133;

23 (iii) The local governing body if it is entering an  
24 appearance to protest the issuance of the license or if it is  
25 requesting a hearing pursuant to subdivision (1)(c) of section  
26 53-133; and

27 (iv) The commission;

28 (b) In the case of an administrative proceeding before a



1 local governing body to cancel or revoke a retail, bottle club, or  
2 craft brewery license:

3 (i) The licensee; and

4 (ii) The local governing body; and

5 (c) In the case of an administrative proceeding before  
6 the commission to suspend, cancel, or revoke a retail, bottle club,  
7 or craft brewery license:

8 (i) The licensee; and

9 (ii) The commission.

10 Sec. 9. Original sections 53-101, 53-117.02, 53-117.07,  
11 and 53-117.08, Reissue Revised Statutes of Nebraska, and sections  
12 53-117, 53-133, and 53-1,115, Revised Statutes Supplement, 1999,  
13 are repealed.